Filed 7/21/09 Gromova v. Gromov CA2/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

GALINA GROMOVA, Plaintiff and Appellant, v. LEONID GROMOV, Defendant and Respondent.	B207781 (Los Angeles County Super. Ct. No. BD475345)

APPEAL from an order of the Superior Court of Los Angeles County, Gretchen W. Taylor, Commissioner. Affirmed.

Galina Gromova, in pro. per., for Plaintiff and Appellant.

Leonid Gromov, in pro. per., for Defendant and Respondent.

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INTRODUCTION

In a dissolution proceeding, the wife appeals an order awarding temporary spousal support and temporary child support to her. We conclude that neither the amount of the spousal support order, nor the trial court's determination not to make the award retroactive to the date the wife filed the request for spousal support, was an abuse of the trial court's discretion. With regard to the temporary child support order, we find that the wife has not shown that making the temporary child support order retroactive to December 1, 2007 rather than November 1, 2007, was an abuse of discretion. We also find no abuse of discretion in the trial court's imputation of income to the wife for purposes of the temporary child support award. We affirm the order.

FACTUAL AND PROCEDURAL HISTORY

Galina Gromova and Leonid Gromov married on April 14, 2001. Their child, Anastasiya Gromova, was born in March 2002. Gromova and Gromov separated on October 19, 2007. On November 2, 2007, Gromova filed a petition for legal separation from Gromov.

On November 2, 2007, Gromova also filed an order to show cause for child custody, child support, attorney fees and costs, monitored visits for Gromov, spousal support, and for an injunctive order. Gromova's attached income and expense declaration stated that she had never worked and had no income. Gromova, 28 years old, obtained an MSW degree in Russia. Gromova estimated that Gromov earned gross monthly income of $7,400, and stated her average monthly expense as $4,850. Gromova sought "guideline" child support and spousal support, and $7,500 attorney's fees and costs.

Gromov filed a response and request for dissolution of marriage. It alleged that separate, community, and quasi-community property assets and debts were unknown. Gromov requested a determination of property rights and a termination of the court's jurisdiction to award spousal support to Gromova.

Gromov filed a responsive declaration to Gromova's OSC. Gromov, a United States Air Force captain, was stationed in Florida. Gromov requested that the parties

jointly share legal and physical custody of Anastasiya and unmonitored visits, and proposed a schedule for Anastasia's visits to Gromov in Florida. Gromov consented to guideline child support, but did not consent to Gromova's requested award of spousal support or attorney's fees. Gromov requested denial of spousal support because, as he alleged, Gromova cohabited with Craig Walter Ross, and was able to earn income as she was young, highly educated, and bilingual.

Gromov estimated Gromova's gross monthly income, based on the minimum wage, as $1,300. Gromov stated his average monthly income to be $4,161, and his average monthly expenses to be $5,240.

Gromova's reply declaration stated that she did not agree that Gromov should have visitation during Anastasiya's holidays and school vacations, but agreed that Anastasiya should share that time equally. Gromova stated her understanding that as of January 1, 2008, military personnel would receive a 3.5 percent pay increase and their Basic Allowance for Housing would increase 7.3 percent.

Gromova stated that she had not worked since coming to the United States. She had a master's degree in Russia, but her degree did not qualify her as a social worker in this country. Although she applied for a number of positions as a social worker, she was called for only one interview and was not hired as she lacked knowledge of the method of practice in the United States and had difficulty communicating in English.

Gromova stated that Gromov's claim that she cohabited with Craig Ross was false. Gromova stated that she was a tenant of Ross and his wife of 15 years. Gromova stated that she met Ross when he was looking for an unpaid intern for one of his projects, and to gain work experience started working for Ross's company as an administrative and marketing unpaid intern. Gromova stated that she planned to move to her own residence when she started receiving support.

On January 7, 2008, the trial court made the following orders, as reflected in the subsequent formal order filed on March 6, 2008. 1) The trial court awarded joint legal custody of Anastasiya to Gromova and Gromov, with Gromova as primary custodian. The trial court made orders for Gromov's custodial time with Anastasya in California and

in Florida, during Anastasiya's winter break, for transporting Anastasiya to the custody of either parent, and for payment of transportation expenses. 2) The trial court ordered Gromov to pay Gromova $1,016 monthly temporary child support retroactive to December 1, 2007. 3) The trial court ordered Gromov to pay $7,500 to Gromova's attorney for her attorney's fees and costs. 4) The trial court ordered Gromov to pay Gromova $1,000 monthly temporary spousal support beginning January 1, 2008.

Gromova filed a timely notice of appeal from the March 6, 2008, order for temporary child and spousal support, an appealable order.[1]

ISSUES

Gromova claims on appeal that the trial court abused its discretion by

1. Reducing previously ordered guideline spousal support for no reason and abruptly terminating the hearing;

2. Denying spousal support retroactivity;

3. Denying child support retroactivity for the month of November 2007; and by

4. Imputing income to Gromova when substantial evidence does not support the imputation of income to Gromova.

DISCUSSION

1. The Temporary Spousal Support Order Was Not an Abuse of Discretion

Gromova claims that when making the temporary spousal support order, the trial court abused its discretion by reducing the previously ordered guideline spousal support for no reason and terminating the hearing.

There was no previously ordered guideline, however. At the January 7, 2008, hearing, the trial court determined that the parties had agreed to a non-guideline number, and specifically stated that the trial court did not make a guideline finding of the dissomaster prepared by the parties' counsel and attached to the trial court's January 7,

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[1] An order granting or denying temporary spousal support is appealable (*In re Marriage of Campbell* (2006) 136 Cal.App.4th 502, 506), as is an award of temporary child support (*County of Yolo v. Worrell* (1989) 208 Cal.App.3d 471, 474, fn. 6).

2008, minute order. Thus the spousal support award of $1,000 per month was not a reduction of previously ordered spousal support.

Gromova argues the trial court provided no explanation of its temporary spousal support award. No statement of decision is required in a proceeding to determine temporary spousal support. (*In re Marriage of Askmo* (2000) 85 Cal.App.4th 1032, 1040.)

Gromova argues that deviation from the guideline amount of spousal support requires consideration of the wife's needs, the husband's ability to pay, and their marital standard of living. Guidelines for temporary support do not bind the trial court and the court can disregard them in cases with unusual facts or circumstances. (*In re Marriage of Burlini* (1983) 143 Cal.App.3d 65, 70.) In fixing an amount of temporary spousal support, the trial court is not restricted by any set of statutory guidelines. Temporary spousal support may be ordered in any amount based on the party's need and the other party's ability to pay. (*In re Marriage of Wittgrove* (2004) 120 Cal.App.4th 1317, 1327.) The amount of the award is within the sound discretion of the trial court, and this court will reverse such an award only on a showing of clear abuse of discretion. (*Id.* at p.1327.)

The trial court stated that she took Gromov's paycheck, deducted child support and taxes, and looked to what was left to pay spousal support. As stated on his income and expense declaration, Gromov's monthly income totaled $5,668. His taxes and a dental deduction totaled $466.47; his expenses included $1,500 paid as support for his mother and a son living in Russia. Subtracting these amounts from income leaves $3,701.53, which was less than his other stated expenses totaling $3,740. Gromova did not challenge these amounts, except to assert that she understood that effective January 1, 2008, military service personnel would receive a 3.5 percent pay increase and the military basic allowance for housing would increase by 7.3 percent.

Thus Gromov's ability to pay temporary spousal support was limited, especially when Gromov was also to pay child support of $1,016. We find no abuse of discretion in the trial court's award of temporary child support.

2. The Spousal Support Order Made Effective January 1, 2008, Instead of Being Retroactive to November 2, 2007, Was Not an Abuse of Discretion

The trial court ordered Gromov to pay $1,000 monthly temporary spousal support beginning January 1, 2008. Gromova claims that the trial court abused its discretion by not making the temporary spousal support order retroactive to November 2, 2007, the date Gromova filed an OSC for spousal support.

Gromova cites *In re Marriage of Dick* (1993) 15 Cal.App.4th 144 as authority for the trial court's power to make spousal support retroactive to the date the action for dissolution and request for support was filed. *Marriage of Dick*, however, holds only that jurisdiction to make a temporary spousal support retroactive begins with the filing of a petition for legal separation, and is not limited to the filing of the OSC re spousal support. (*Id*. at p. 166.) *Marriage of Dick* does not require all temporary spousal support awards to be retroactive either to the date of filing of the OSC re spousal support or to the date of the filing of a petition for legal separation. The existence of jurisdiction to make a temporary spousal support award retroactive to an earlier date is not a requirement that the trial court exercise discretion to do so. Gromova otherwise provides no authority requiring a temporary spousal support order to be retroactive to the date of the filing of the OSC re temporary spousal support.

The record on appeal does not appear to show that Gromova made a request to have temporary spousal support retroactive to November 2, 2007, or that she objected to the order on this ground when it was made. Although the trial court did not explain its reasons for making the temporary spousal support award effective January 1, 2008, rather than retroactive to November 2, 2007, Gromova made no request for a statement of decision addressing the retroactivity issue and did not object to the absence of an explanation of the order. Therefore this court indulges the presumption in favor of the correctness of the order and implies findings to support that order. (*In re Marriage of Weinstein* (1991) 4 Cal.App.4th 555, 570.) We find no abuse of discretion.

3. Gromova Has Not Shown That the Trial Court Abused Its Discretion By Making Temporary Child Support Retroactive to December 1, 2007, Rather Than November 1, 2007

The trial court ordered Gromov to pay $1,016 monthly temporary child support retroactive to December 1, 2007. Gromova claims that the trial court abused its discretion by not making the temporary child support order retroactive for the month of November 2007.

The record shows that Gromova's attorney requested that child support be made retroactive to November 15, 2007, not for all of November 2007. [2]

Family Code section 4009[3] grants the trial court discretion to make a child support order retroactive to the date of filing the petition, complaint, or other initial pleading.[4] The statute, however, is permissive; it does not require the trial court to order child support retroactive to the filing of the initial pleading. Gromova provides no authority requiring the trial court to make a temporary child support award retroactive to the date of the filing of the OSC re temporary child support.

Gromova argues that the trial court provided no explanation for its denial of retroactive child support for the month of November 2007. A statement of decision is required when a child support order differs from the amount provided in Child Support Guidelines (*In re Marriage of Hall* (2000) 81 Cal.App.4th 313, 318; Fam. Code, § 4056, subd. (a)). Gromova cites no authority requiring a statement of decision stating why a

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[2] In the January 7, 2008, hearing, Gromova's attorney requested that temporary child support be made retroactive to November 15, 2007, not for the whole month of November 2007.

[3] Unless otherwise specified, statutes in this opinion will refer to the Family Code.

[4] Section 4009 states: "An original order for child support may be made retroactive to the date of filing the petition, complaint, or other initial pleading. If the parent ordered to pay support was not served with the petition, complaint, or other initial pleading within 90 days after filing and the court finds that the parent was not intentionally evading service, the child support order shall be effective no earlier than the date of service."

child support order was retroactive for one month, but not for two months. As Gromova made no request for a statement of decision addressing the issue of retroactivity and no objection to the absence of an explanation for the order, this court indulges the presumption in favor of the correctness of the order and implies findings to support that order. (*In re Marriage of Weinstein, supra,* 4 Cal.App.4th at p. 570.)

4. The Imputation of Income to Gromova for Purposes of the Temporary Child Support Award Was Not An Abuse of Discretion

Gromova claims that the trial court abused its discretion when it imputed income to her, and that substantial evidence does not support the imputation of income for purposes of the temporary child support award.

In making a child support award, trial courts must adhere to the principle that each parent should pay child support according to his or her ability. (Fam. Code, § 4053, subd. (c); *County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1445.) In determining the annual gross income of each parent for purposes of child support, section 4058, subdivision (b) states: "The court may, in its discretion, consider the earning capacity of a parent in lieu of the parent's income, consistent with the best interests of the children." Where the parent has the ability and opportunity to earn, the trial court has discretion to consider earning capacity when consistent with the child's best interests. (*Brothers v. Kern* (2007) 154 Cal.App.4th 126, 135.) The imputation of income to a parent is proper when that income reasonably could have been earned but was not actually earned. (*Id*. at p. 134.) Imputing income constitutes a substitution of earning capacity for actual income in applying the guideline formula. Because imputation of income to a spouse does not constitute a departure from the presumptively correct guideline formula, no express finding of special circumstances is required. (*In re Marriage of LaBass & Munsee* (1997) 56 Cal.App.4th 1331, 1336-1337.)

Gromova argues that the evidence did not support the court's imputation to her of minimum wage salary. To impute income to a parent based on the parent's earning capacity rather than actual income in computing child support, a three-prong test must be satisfied. Earning capacity comprises (1) the ability to work, including factors of age,

occupation, skills, education, health, background, work experience and qualifications; (2) willingness to work, exemplified through good faith efforts, due diligence, and meaningful attempts to obtain employment; and (3) an opportunity to work, defined as an employer who is willing to hire. (*In re Marriage of LaBass & Munsee*, *supra*, 56 Cal.App.4th at p. 1337-1338.) Gromova claimed never to have worked. Nonetheless she had completed high school or the equivalent and had earned an MSW degree in Russia. Gromov alleged that Gromova had the ability to earn income, since she was 28 years old, healthy, bilingual, and highly educated. Gromov disputed Gromova's statement that she had never worked, alleging that while enrolled at Solano Community College in Fairfield, California, Gromova worked at the Child Development Center at Travis Air Force Base as part of her work experience through Solano Community College. Gromov further alleged that Gromova was offered a full-time position, but Gromova refused. Gromova disputed this, stating in her declaration that she was an unpaid assistant at the Child Development Center and received no job offer. Gromova also stated that she had not worked since coming to the United States, and her Russian education was the equivalent of a master's degree but did not qualify her as a social worker. Regarding employment applications, she stated: "I have applied for a number of positions as a Social Worker. I was called for only one interview, and was not hired, as I lack knowledge of the method of practice in this country, and have difficulty communicating in English."

Gromova thus provided only general evidence of her applications for employment. There was no evidence that she had applied for work at minimum wage or that employers had refused to hire her. There was evidence that she had refused work previously. We find that the trial court properly imputed income from minimum wage employment to Gromova.

Section 4058, subdivision (b) also requires the imputation of income to a parent to be consistent with the best interest of the child. (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 301.) We imply that finding.

A child support order, and the decision to impute income to a parent for child support purposes, is reviewed for an abuse of discretion. We do not substitute our own judgment for that of the trial court, but determine only if any judge reasonably could have made such an order. (*In re Marriage of Schlafly* (2007) 149 Cal.App.4th 747, 753.) We find no abuse of discretion in the trial court's temporary child support order.

DISPOSITION

The order is affirmed. 0Costs on appeal are awarded to respondent Leonid Gromov.

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KITCHING, J.

We concur:

CROSKEY, Acting P. J.

ALDRICH, J.